

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JANET GASWINT,

Plaintiff,

v.

PRIMERICA LIFE INSURANCE
COMPANY,

Defendants.

Case No. 2:22-cv-247-TLF

ORDER ON PLAINTIFF'S MOTION
TO COMPEL DISCOVERY

This matter comes before the Court on plaintiff's motion to compel discovery. Dkt. 15. The parties have complied with the meet-and-confer requirement of Fed. R. Civ. P. 37(a)(2)(B). The Court held oral argument on the instant motion on January 10, 2023. Dkt. 25. For the reasons set forth herein, plaintiff's motion to compel is granted.

DISCUSSION

Pursuant to Fed. R. Civ. P. 37 a party may move for an order compelling a party to appropriately respond to discovery when a party fails to produce documents or permit inspection as required by Rule 34. Fed. R. Civ. P. 37(a)(3)(B)(iv). Rule 34 allows a party to serve on another party a request for production within the scope of Rule 26(b). Fed. R. Civ. P. 34(a). Rule 26(b)(1) states:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to the

1 relevant information, the parties' resources, the importance of the
2 discovery in resolving the issues, and whether the burden or expense of
the proposed discovery outweighs its likely benefit. Information within this
scope of discovery need not be admissible in evidence to be discoverable.

3 Under Fed. R. Civ. P. 33, the purpose of interrogatories is to "limit and clarify the
4 issues for the parties in preparation for further trial proceedings." *Soria v. Oxnard Sch.*
5 *Dist. Bd of Trs.*, 488 F.2d 579, 587 (9th Cir. 1973). If the responding party objects, any
6 objection must be plain and specific, to allow the court to understand the specific
7 objectionable characteristic being asserted by the responding party. *Davis v. Fendler*,
8 650 F.2d 1154, 1160 (9th Cir. 1981).

9 According to Fed. R. Civ. P. 34, requests for production, including requests for
10 electronically stored information (ESI) and tangible things, must be responded to either
11 by "stat[ing] that inspection and related activities will be permitted as requested or
12 stat[ing] with specificity the grounds for objecting to the request, including the reasons."
13 Fed. R. Civ. P. 34(b)(2)(C). If the producing party objects to part of a request, the
14 producing party is required to include in the objection, a statement that specifies which
15 part is being objected to, "and permit inspection of the rest." *Id.*

16 A party is only required to produce documents and records within their
17 "possession, custody or control." *United States v. International Union of Petroleum &*
18 *Industrial Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989) (citing Fed. R. Civ. P. 34(a)).
19 The party seeking production of the document bears the burden of proving that the
20 opposing party has possession of the document or evidence requested. *Id.* Additionally,
21 the moving party bears the burden of showing that the discovery responses were
22 incomplete. *Daiflon, Inc. v. Allied Chemical Corp.*, 534 F.2d 221, 227 (10th Cir. 1976).

1 A district court has broad discretion to grant or deny a motion to compel. See
2 *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). Under Fed. R. Civ. P. 26(b)(2)(C),
3 the Court is required to limit the frequency or extent of discovery if the discovery
4 requested is “unreasonably cumulative or duplicative, or can be obtained from some
5 other source that is more convenient, less burdensome, or less expensive,” or if the
6 requesting party “has had ample opportunity to obtain the information by discovery in
7 the action,” or if the requesting party is seeking information that is outside of the scope
8 of discovery under Rule 26(b)(1).

9 I. Plaintiff’s Motion to Compel

10 Plaintiff filed the instant motion requesting the Court compel defendant to
11 produce the following:

- 12 1. Interrogatory No. 6: Identify the person most knowledgeable at the present
13 time with respect to: (a) all measures undertaken by defendant to comply
14 with the USA Patriot Act with regard to communications with John
15 Gaswint; (b) defendant’s policies and procedures between 1995 and 2020
16 with respect to all correspondence returned as undeliverable to defendant
17 by the U.S. Postal Service; and (c) all measures undertaken by defendant
18 to comply with RCW 48.18.289 in Washington state between 1995 and
19 2020.
- 20 2. Requests for Production Nos. 1-3: Copies of the two underwriting files and
21 the one claims file involved in the lawsuit.

3. Request for Production No. 4: All documents which describe or explain defendant's policies and procedures regarding cancellation or nonrenewal of a life insurance policy in Washington State.
4. Request for Production No. 5: All documents that describe, explain or prescribe defendant's policies and procedures regarding compliance with the USA Patriot Act.
5. Request for Production No. 6: All documents that describe, explain or prescribe defendant's policies and procedures for the handling of undeliverable mail by the U.S. Postal Service.
6. Request for Production No. 7: All documents that describe, explain or prescribe all measures undertaken by defendant to comply with RCW 48.18.289 in Washington State between 1995 and 2020.
7. Request for Production No. 8: All documents or electronically stored information regarding defendant's customer service contacts or communications with John Gaswint, plaintiff, or four of defendant's employees/representatives.

In response to plaintiff's requests for supplemental responses to Requests for Production Nos. 4, 5, 6, and 7, the Court GRANTS plaintiff's motion. Defendant argues that the information plaintiff requests is irrelevant because it is "undisputed" that the Rider clearly dated the expiration date, i.e., the Rider was not non-renewed. Dkt. 18 at 5. However, plaintiff argues that there was in fact a nonrenewal by defendant in this case. Dkt. 15 at 6. See *a/so* Dkt. 1 (Plaintiff's Complaint) at ¶¶3.6, 4.1-4.2. Because there has not yet been a dispositive motion and the parties are at the discovery stage, it

1 is premature for the Court to exclude certain categories of evidence based on the
2 defendant's legal position, nor would the Court apply a particular interpretation of the
3 facts. Consequently, these requests ask for information that fits within the definition of
4 discoverable information under FRCP 26 (b)(2)(C), and therefore the Court grants
5 plaintiff's motion to compel Requests for Production Nos. 4, 5, 6, and 7.

6 Relatedly, for the same reasons, the Court grants plaintiff's motion to compel a
7 supplemental response to Interrogatory No. 6. Defendant is instructed to identify an
8 individual who is knowledgeable about the three topics identified in the interrogatory.

9 With respect to the 1995 to 2020 date range provided by plaintiff, the Court
10 instructs the parties to meet and confer about narrowing the range for Interrogatory No.
11 6 and Requests for Production Nos. 4, 5, 6, and 7. The earliest date in the range should
12 be no earlier than the date on which plaintiff moved from their Stanwood, Washington
13 home. And the latest date in the range would be the date on which defendant was
14 informed of the death of Mr. Gaswint, the individual whose life was insured. The parties
15 are instructed to meet and confer on confirming this refined date range.

16 Finally, the parties, during oral argument, confirmed that defendant provided
17 responses to Requests for Productions Nos. 1-3 and 8. Thus, plaintiff's motion to
18 compel on those requests is denied, as moot.

19 CONCLUSION

20 For the foregoing reasons, plaintiff's motion to compel (Dkt. 15) is granted in part.
21 The parties are instructed to meet and confer about a more limited date range for
22 Interrogatory No. 6 and Requests for Production Nos. 4, 5, 6, and 7. Further, as
23 instructed by the Court during oral argument, the parties should contact the Courtroom
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1 Deputy no later than January 27, 2023 on two agreed-upon dates in April 2023 for
2 pretrial conferences.

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4 Dated this 18th day of January, 2023.

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8 Theresa L. Fricke
9 United States Magistrate Judge
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